

## REMARKS

The present application was filed on September 25, 2003 with claims 1 through 25. Claims 1 through 25 are presently pending in the above-identified patent application. In this response, applicants propose to amend claims 1-5, 7, 9-11, 13, 15, 17, 19, and 21-25.

5           The Examiner is thanked for the courtesy of a telephone interview on March 18, 2008. As discussed during the interview, independent claims 1, 11, and 21 have been amended to address the section 112 rejections. Thus, Applicants submit that no “new issues” are raised by the present amendment that would require a new search. It is thus believed that examination of the pending claims, as amended, are consistent with the previous record herein and will not place  
10 any substantial burden on the Examiner. Applicants note that the Examiner indicated during the telephone interview that independent claim 1, as amended, would be allowable and note that independent claims 11 and 21 should be allowable for the same reasons.

          In the Office Action, the Examiner rejected claims 1-25 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for progressively reducing, does  
15 not reasonably provide enablement for progressively selected from a group of more than one transmission rate in claims 1, 11, and 21. The Examiner rejected claims 1-10 and 21-25 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner also rejected claims 1-25 under 35 U.S.C. §102(b) as being anticipated by Johnson et al. (European  
20 Patent Number EP 1 096 729 A1; hereinafter Johnson).

### Section 112, First Paragraph, Rejections

          Claims 1-25 were rejected under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for progressively reducing, does not reasonably provide enablement for progressively selected from a group of more than one transmission rate in claims  
25 1, 11, and 21. In particular, the Examiner asserts that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. In the Response to Arguments section of the final Office Action, the Examiner asserts that, in the present specification, “the reduction, not

the selection, is what is done progressively.”

Applicants have amended the independent claims to require that the retransmission rate is progressively *reduced*. Support for this amendment can be found on page 2, lines 21-22, and page 3, lines 3-13, of the originally filed disclosure. Applicants believe that this amendment addresses the Examiner’s concerns and respectfully request that the section 112, first paragraph, rejection be withdrawn.

Section 112, First Paragraph, Rejections

Claims 1-10 and 21-25 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the Examiner asserts that it is unclear whether the “current frame” in lines 3 and 4 is part of the “transmission of data” in line 2 because “an acknowledgement” in line 4 indicates that there is a transmission of the current frame. Regarding claim 21, the Examiner asserts that it is unclear whether the “current frame” in lines 3 and 4 and the “subsequent frame” in line 5, are part of the “transmission of data” in line 2 because “an acknowledgement” in line 4 indicates that there is a transmission of the current frame and “said transmission rate for a subsequent frame” in lines 4-5 indicates that there is a transmission of the subsequent frame. The Examiner also asserts that there is insufficient antecedent basis for the term “said transmission rate” in claim 21.

The cited claims have been amended to address the Examiner’s concerns. Applicants believe that these amendments address the Examiner’s concerns and respectfully request that the section 112, second paragraph, rejections be withdrawn.

Independent Claims 1, 11 and 21

Independent claims 1, 11, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson. Regarding claims 1 and 11, the Examiner asserts that Johnson teaches a rate fallback mechanism (FIG. 2; paragraph [0024]) that reduces a retransmission rate only for a current frame (step 406 in FIG. 4; paragraph [0028]; col. 10, lines 5-6) when an acknowledgement is not received for said current frame (step 405 in FIG. 4; paragraph [0028]; col. 9, line 58, to col. 10, line 1).

Applicants note that Johnson teaches that the transmission data rate of a data packet is reduced from a “higher data rate” to a “lower data rate.” Johnson does *not*, however, disclose or suggest that the retransmission data rate is progressively reduced to at least one of two or more lower retransmission data rates. Independent claims 1, 11, and 21 have been amended to require that the retransmission data rate is progressively reduced to at least one of two or more lower retransmission data rates. Support for this amendment can be found on page 2, lines 21-22, and page 3, lines 3-13, of the originally filed disclosure.

Thus, Johnson does not disclose or suggest that the retransmission rate is progressively reduced to at least one of two or more lower retransmission data rates, as required by independent claims 1, 11, and 21, as amended.

Dependent Claims 2-10, 12-20 and 22-25

Dependent claims 2-10, 12-20, and 22-25 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson.

Claims 2-10, 12-20, and 22-25 are dependent on claims 1, 11, and 21, respectively, and are therefore patentably distinguished over Johnson because of their dependency from amended independent claims 1, 11, and 21 for the reasons set forth above, as well as other elements these claims add in combination to their base claim.

All of the pending claims, i.e., claims 1-25, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

/Kevin M. Mason/

5     Date: April 7, 2008

Kevin M. Mason  
Attorney for Applicants  
Reg. No. 36,597  
Ryan, Mason & Lewis, LLP  
1300 Post Road, Suite 205  
Fairfield, CT 06824  
(203) 255-6560

10